

Town of Frederick Board of Trustees



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AM 2009-003


REQUEST TO AMEND ORDINANCE 951 AND WAIVER TO ALLOW A PHASED PERFORMANCE GUARANTEE FOR AVOCET SUBDIVISION

Agenda Date: Town Board Meeting - January 13, 2008

Attachments:

- a. Applicant's request for amendments to Ordinance 951
- b. Adopted Ordinance 951
- c. Proposed Ordinance
- d. Applicant's request for a waiver to the performance guarantee requirements
- e. Avocet Subdivision Phasing Diagram

Fiscal Note: None noted or provided Fiscal Note.



Finance Director

Submitted by: 

Todd Tucker, Staff Planner

Approved for Presentation: 

Town Administrator

AV Use Anticipated Projector X Laptop

Certification of Board Approval: _____ Date _____
Town Clerk

Summary Statement:

The applicant has requested changes to two conditions of approval within the Avocet Subdivision to accommodate phasing of the proposed development. In addition, the applicant has requested a waiver to the Town's policy noted in section 1.12 of the Memorandum of Agreement for Public Improvements (MOAPI), to allow for the Performance Guarantee to be phased in proportion to the projected costs and expenses necessary to complete each phase of the development.

Detail of Issue/Request:

Applicant and Owner: Luke Stromquist

Agent: Brandon Shaffer
Grant, Grant, and Goiran LLP

Summary: There are two parts to this request. First, the proposed subdivision was approved by the Board of Trustees on March 13, 2008 subject to nine conditions in Ordinance 951. The applicant request that conditions 5 and 7 be modified to allow for phased development as noted below. The struck-through language reflects the existing language in the Ordinance, followed by the applicants proposed language:

5. ~~Within the HOA documents create a mechanism by which the HOA will participate in the costs of connecting to the St. Vrain Sanitation District sanitary sewer system when the sewer main is to be extended to within 400 feet of any portion of this development. A note to this effect shall be added to the subdivision plat.~~ Within Phase II of the development, the HOA documents shall create a mechanism by which the HOA will participate in the costs of connecting to the St. Vrain Sanitation District sanitary sewer system when the sewer main is to be extended to within 400 feet of any portion of this phase of development. Lots within Phase I and Phase II shall be subject to state law for connection to sanitary sewer, as amended. A note to this effect shall be added to the subdivision plat.
7. ~~Provide a copy of the agreement with the Godding Dailey and Plumb Ditch Company regarding the Storm Water Discharge into the irrigation ditch prior to recordation of the plat.~~ Prior to issuance of any permits for Phase II of the development a copy of the agreement with the Godding Dailey and Plumb Ditch Company regarding the Storm Water Discharge into the irrigation ditch shall be provided to the Town. A note to this effect shall be added to the subdivision plat.

The second part of the request encompasses a waiver request and relates to phasing. Since the applicant has requested that the development be phased to accommodate market conditions, the applicant has requested a waiver to the Town's policy noted in Section 1.12 of the Memorandum of Agreement for Public Improvements (MOAPI), to allow for the Performance Guarantee to be phased in proportion to the projected costs and expenses necessary to complete each phase of the development (see attachment e). The current language of Section 1.12 (a) through (c) follow:

Section 1.12 Financing and Improvement Guarantees.

- (a) *Except as otherwise specifically agreed herein, the DEVELOPER agrees to install and pay for all improvements described in "Exhibit B" or otherwise required by this MOAPI as shown on the accepted plat, landscape plans, utility plans, construction drawings, and other accepted documents on file with the TOWN.*
- (b) *DEVELOPER shall submit to the TOWN an Improvement Guarantee for all public improvements related to the Development. The term of the guarantee shall be for a time sufficient to cover the completion of construction of the public improvements and the warranty period through final acceptance; in no case shall*

the term of the guarantee be for fewer than two years. The guarantee may be in cash, certified check, or a letter of credit in form and substance as shown on "Exhibit C" attached hereto and incorporated herein by reference. The guarantee shall be subject to approval by the Town Attorney. The guarantee, if a letter of credit, shall not expire during the winter season (November 1- April 30). The Improvement Guarantee shall include, but not be limited to, all water system improvements, sanitary sewer collection lines, sanitary sewer lift stations, storm sewer lines and catch basins, storm drainage swales, storm drainage detention ponds and other improvements, streets, curbs, gutter, sidewalks, landscaping, pedestrian and non-motorized paths and trails, street median, boulevard and subdivision entryway landscaping, park improvements, irrigation systems, gas services, electric services, telephone services, cable television services and any other improvements constructed in relation to the development of the (Insert the name of the subdivision or PUD) as described by Exhibit B or by Exhibit F.

- (c) *The total amount of the guarantee shall be calculated as 10 percent (10 %) of the total estimated cost including labor and materials of all public improvements to be constructed as described on "Exhibit B," except those public utilities to be owned by an entity other than the TOWN and for which a separate surety is provided. TOWN shall not release The Improvement Guarantee until the TOWN has granted final acceptance of the improvements. The costs established in "Exhibit B" shall be reviewed and approved by the Town Engineer.*

Section 4.7.8.c. of the Land Use Code establishes the criteria for approval of a waiver. The condition of any waiver authorized shall be stated in writing in the minutes of the Board of Trustees with the justifications set forth. Waivers may be granted only if they meet the following criteria:

- (1) The waiver, if granted, will not alter the essential character of the neighborhood or district in which the property is located, nor diminish the value, use or enjoyment of adjacent property.**
- (2) The waiver, if granted, is the minimum variance that will afford relief and is the least modification possible of the subdivision ordinance provisions which are in question.**
- (3) Such practical difficulties or unnecessary hardship has not been created by the applicant.**

The applicant requests a waiver to the Town's policy noted in Section 1.12 of the Memorandum of Agreement for Public Improvements (MOAPI), to allow for the Performance Guarantee to be phased in proportion to the projected costs and expenses necessary to complete each phase of the development, as further described in the attached letter.

Staff finds no conflict between the request and the criteria for approval.

Legal/Political Considerations:

None noted.

Alternatives/Options:

The Board of Trustees may consider the following options regarding the application:

- ☐ Approve the request finding it is substantially in conformance with the provisions of the Land Use Code and Comprehensive Plan;
- ☐ Deny the request with a finding that it does not substantially achieve conformance with the provisions of the Land Use Code and Comprehensive Plan;
- ☐ Approve the request finding that it would be substantially in conformance with the provisions of the Land Use Code and Comprehensive Plan if certain conditions are met;

Financial Considerations:

Not applicable.

Recommendation:

Staff recommends approval of the request to modify conditions 5 and 7 of Ordinance 951 as noted below:

5. Within Phase II of the development, the HOA documents shall create a mechanism by which the HOA will participate in the costs of connecting to the St. Vrain Sanitation District sanitary sewer system when the sewer main is to be extended to within 400 feet of any portion of this development. Lots within Phase 1 shall be to state law for sanitary sewer, as amended. A note to this effect shall be added to the subdivision plat.
7. Prior to issuance of any permits for Phase II of the development a copy of the agreement with the Gooding Dailey and Plumb Ditch Company regarding the Storm Water Discharge into the irrigation ditch shall be provided to the Town. A note to this effect shall be added to the subdivision plat.

Staff also recommends approval of the applicants request for a waiver to the Town's policy noted in section 1.12 of the Memorandum of Agreement Public Improvements (MOAPI), to allow for the Performance Guarantee to be phased in proportion to the projected costs and expenses necessary to complete each phase of the development.